

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Monroe D. Kiar, Town Attorney (954) 583-9770

**SUBJECT:** Ordinance

**TITLE OF AGENDA ITEM:** AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA DECLARING A SIX MONTH MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS AND ON THE ISSUANCE OF PERMITS AND APPROVALS FOR THE CONSTRUCTION OF WIRELESS TELECOMMUNICATIONS TOWERS; PROVIDING FOR EXCEPTIONS; SETTING FORTH EXPIRATION AND EFFECTIVE DATES.

**REPORT IN BRIEF:** The Town adopted Ordinance Number 97-16 on March 16, 1997 implementing regulations regarding locations and criteria for commercial communication towers. Since that time, technological innovation and demand for such facilities has necessitated the need to revisit the Town's regulation. Further, good planning and concerns for the quality of life in the Town of Davie dictate a further review of locational criteria and associated standards concerned with the installation of such facilities. Section 2(b), Article VIII of the Florida Constitution and Section 166.021, Florida Statutes, authorizes and requires the Town of Davie to protect the public health, safety and welfare, and gives it the authority to exercise any power for a governmental purpose except when expressly prohibited by law. Section 163.3202 of the Florida Statutes gives authority to the Town of Davie to enact land development regulations consistent with its adoptive comprehensive plan. The Telecommunications Act of 1996 gives local governments authority over the placement, construction and modification of wireless communications towers and the Town is cognizant of the needs for modern communications and for effective competition in the field and also, that the Town residents receive adequate wireless telecommunications services provided that the facilities are designed and located to minimize safety and aesthetic concerns. The Town staff requires a reasonable period of time to address the technical aspects of the telecommunications industry as they impact land use decisions so that the Town Council can properly plan for and implement an efficient cost effective wireless communications services network that meets national and local goals and legislative mandates. Accordingly, this Ordinance will afford the Town staff sufficient time to examine these issues and where necessary, revise the Town's regulations.

**PREVIOUS ACTIONS:** On March 19, 1997, the Town adopted Ordinance Number 97-16 implementing regulations regarding locations and criteria for commercial communications towers.

**CONCURRENCES:** N/A

**FISCAL IMPACT:** This may have a funding issue. Needs to be determined by Council if consultants are needed.

**RECOMMENDATIONS:** Motion to approve Ordinance

**ATTACHMENTS:** Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA DECLARING A SIX MONTH MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS AND ON THE ISSUANCE OF PERMITS AND APPROVALS FOR THE CONSTRUCTION OF WIRELESS TELECOMMUNICATIONS TOWERS; PROVIDING FOR EXCEPTIONS; SETTING FORTH EXPIRATION AND EFFECTIVE DATES.

WHEREAS, pursuant to Section 2(b), Article VIII, of the Florida Constitution, and §166.021, Florida Statutes, Town of Davie is authorized and required to protect the public health, safety, and welfare and may exercise any power for a governmental purpose except when expressly prohibited by law, and, pursuant to this authority and §163.3202, Florida Statutes, Town of Davie has enacted land development regulations, consistent with its adopted comprehensive plan, which protect the quality of life in the Town;

WHEREAS, the Town adopted Ordinance Number 97-16 on March 19, 1997, implementing regulations regarding locations and criteria for commercial communication towers; and

WHEREAS, since that time, technological innovation has been explosive; and demand for such facilities has necessitated the need to revisit potential deficiencies in the Town's regulations; and

WHEREAS, good land planning and concern for the quality of life in the Town of Davie dictate a further review of locational criteria and associated standards concerned with the installation of such facilities; and

WHEREAS, the Telecommunications Act of 1996 makes it clear that, as long as local zoning requirements satisfy certain conditions as codified within the Act, the authority of local governments over the placement, construction and modification of wireless telecommunications towers ("towers") is neither limited nor effected; and

WHEREAS, the Town is cognizant of the need for modern communications and for effective competition in the field and also desires that the Town residents receive adequate wireless telecommunications services, provided that the facilities are designed and located to minimize safety and aesthetic concerns; and

WHEREAS, industry and governmental agencies that have studied current technology have established that towers can be designed and installed in ways that will minimize safety and aesthetic concerns; and

WHEREAS, these design and installation methods need improvement in the Town Code; and

WHEREAS, the Town staff requires a reasonable time period to address the technical aspects of the telecommunications industry as they impact land use decisions so that the Town Council can properly plan for and implement an efficient and cost-effective wireless communications services network that meets national and local goals and legislative mandate; and

WHEREAS, case law has held that six months is a reasonable period of time under the Act for the Town to place a moratorium on the issuance of special use permits for wireless communications facilities, Nat'l Telecomm. Advisors v. Town of Stockbridge, 27 F. Supp. 2d 284 (D. Mass. 1998).

WHEREAS, in view of the foregoing, a situation exists which requires an immediate moratorium on commercial communication towers; and

WHEREAS, this moratorium will be of temporary impact to real properties within the Town; and

WHEREAS, this moratorium is being enacted in good faith, without unjust discrimination, in reliance upon the decision of Sprint Spectrum, L.P. v. City of Medina, 924 F. Supp. 1036 (W.D. Wash. 1996), and Nat'l Telecomm. Advisors v. Town of West Stockbridge, 27 F. Supp. 2d 284 (D. Mass. 1998), and is of the minimum feasible duration;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, THAT:

SECTION 1. This Ordinance is hereby adopted and shall take effect immediately upon its passage and shall continue for a period of six (6) months from the date of adoption, unless terminated earlier or extended by subsequent action of the Town Council.

SECTION 2. The following applications may be considered exemptions to this Ordinance:

1. Any complete application for a tower which was on file prior to the first reading of the Ordinance and which is subsequently determined by the Town Council to meet all applicable requirements on the Land Development Code;
2. Any tower which is determined by the Town Council to be necessary to any governmental utilities or emergency communications system.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are suspended during the time period set forth in Section 1 above.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, then such portion shall be deemed a separate, distinct, and independent provision and such holding shall not effect the validity of the remaining portions of this Ordinance.

SECTION 5. This Ordinance shall take effect upon its passage and adoption.

PASSED ON FIRST READING THIS \_\_\_\_\_ day of \_\_\_\_\_, 2001

PASSED ON SECOND READING THIS \_\_\_\_\_ day of \_\_\_\_\_, 2001

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2001